

MARC THOMSEN

IBLA 96-247

Decided April 30, 1999

Appeal from a decision of the California State Office, Bureau of Land Management, declaring a mining claim abandoned, null and void. CAMC 251495.

Dismissed.

1. Appeals--Rules of Practice: Appeals: Dismissal--Rules of Practice: Appeals: Notice of Appeal--Rules of Practice: Appeals: Timely Filing

Under 43 C.F.R. § 4.411(a), a person who wishes to appeal a decision to the Board of Land Appeals must file his notice of appeal in the office of the officer who made the decision (not the Board of Land Appeals).

Thus, an appeal in which the appellant had filed a notice of appeal with the Board but not with the proper BLM office must be dismissed.

APPEARANCES: Marc Thomsen, pro se; Donna L. Reynolds, Supervisor, Mining Claim Recordation Unit, Division of Energy and Minerals, California State Office, Bureau of Land Management.

OPINION BY CHIEF ADMINISTRATIVE JUDGE BYRNES

Marc Thomsen has appealed from a February 29, 1996, decision of the California State Office, Bureau of Land Management (BLM), declaring the Lucked Out Placer Mining Claim (CAMC 251495) abandoned, null and void because no \$100 per claim maintenance fee or waiver certification was filed for the claim on or before August 31, 1995, as required by section 10101 of the Omnibus Budget Reconciliation Act of August 10, 1993 (the Act), 30 U.S.C. § 28f(a) (1994), and 43 C.F.R. §§ 3833.1-5, 3833.1-6, and 3833.1-7. On March 21, 1996, the Board received appellant's notice of appeal, statement of reasons, and petition for a stay, and by order dated April 24, 1996, the Board granted a stay and requested the case file from BLM. In a May 9, 1996, memorandum to the Board, BLM explained that the case file had not been transmitted because BLM had no knowledge that Thomsen wished to appeal the decision until receipt of the Board's order.

[1] We find that Thomsen's appeal must be dismissed because he failed to file his notice of appeal with BLM. Departmental regulation 43 C.F.R. § 4.411(a) provides as follows:

A person who wishes to appeal to the Board [of Land Appeals] must file in the office of the officer who made the decision (not the Board) a notice that he wishes to appeal. A person served with the decision being appealed must transmit the notice of appeal in time for it to be filed in the office where it is required to be filed within 30 days after the date of service.

(Emphasis supplied.) In Thelma M. Eckert, 120 IBLA 367 (1991), we similarly dismissed an appeal in which the appellant had filed a notice of appeal with the Board but not with BLM, quoting from our prior decision in San Juan Coal Co., 83 IBLA 379, 380 (1984), in which we explained the reason for the "place-of-filing" rule:

The purpose of the requirement that the notice of appeal be filed with the office of the officer who made the decision (the "place-of-filing" rule) is to provide first notice to such office, in this case BLM. BLM is the exclusive custodian of records for matters on which it renders decisions. Neither the Board nor the Solicitor has any information whatsoever in its possession about matters pending before BLM. When a notice of appeal is filed with BLM, it then forwards this information to the Board and, in some cases, to the Solicitor, for review in connection with the appeal. Were we to allow appellants to violate the place-of-filing rule, it would be impossible to ascertain whether BLM is aware that a notice of appeal has been filed without communicating with it in every case. In view of the large number of appeals to this Board, this would present an insupportable administrative burden.

The need to conduct business at the BLM office having appropriate jurisdiction has long been recognized. Petro Resources, Inc., 123 IBLA 310, 311-12 (1992); H. Bowen, Jr., 64 IBLA 264, 265 (1982); Gretchen Capital, Ltd., 37 IBLA 392 (1978); see Mathews v. Zane, 20 U.S. (7 Wheat) 164, 209-10 (1822). In San Juan Coal Co., *supra* at 381, we concluded:

The language chosen for [43 C.F.R. § 4.411(a)] leaves no room to question that the place-of-filing requirement is mandatory and, thus, not subject to waiver. See Red Rock Gold & Recreational Association, Inc., 77 IBLA 87 (1983). In the absence of a timely notice of appeal, the Board lacks jurisdiction to consider SJCC's appeal. Gary T. Suhrie, 75 IBLA 9 (1983); James M. Chudnow, 72 IBLA 60 (1983); and cases cited.

Nevertheless, were we to consider the appeal on its merits, we would affirm BLM. Although Thomsen states his belief that he filed his small miner waiver certificate with his affidavit of assessment work that BLM

received on September 13, 1995, this statement of belief is not sufficient to overcome the presumption that BLM employees have properly discharged their official duties and thus have not lost or misplaced legally significant documents. See Wilson v. Hodel, 758 F.2d 1369, 1372 (10th Cir. 1985). Moreover, even if the maintenance fee waiver had accompanied appellant's affidavit of assessment work, it would have been untimely because the envelope in which the affidavit of assessment work was sent was not postmarked until after August 31, 1995. See 43 C.F.R. § 3833.0-5(m).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the appeal is dismissed.

James L. Byrnes
Chief Administrative Judge

I concur:

James F. Roberts
Acting Administrative Judge